

TITLE 1. ADMINISTRATION

OFFICE OF THE STATE INSPECTOR GENERAL

Emergency Regulation

Title of Regulation: **1VAC42-30. Fraud and Abuse Whistle Blower Reward Fund (adding 1VAC42-30-10 through 1VAC42-30-110).**

Statutory Authority: § 2.2-3014 of the Code of Virginia.

Effective Dates: October 26, 2015, through April 25, 2017.

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Preamble:

Without a regulation that establishes the criteria for the Fraud and Abuse Whistle Blower Reward Fund, including eligibility requirements, award distribution amount, and administration of the fund, persons who witness, have evidence of, or suspect fraud, waste, and abuse in state agencies and institutions may be reluctant and unable to report the wrongdoing or abuse. Such reluctance and inability to report a wrongdoing or abuse creates an emergency situation. Section 2.2-4011 of the Code of Virginia allows an agency to adopt regulations that may be necessitated by an emergency situation, upon consultation with the Attorney General, and at the sole discretion of the Governor.

The emergency regulations define the Fraud and Abuse Whistle Blower Reward Program and Fund and their administration by the Office of the State Inspector General, including (i) eligibility requirements; (ii) amount, distribution, and process for leftover moneys at the end of the fiscal year; and (iii) the Fund's establishment on the books of the Comptroller.

CHAPTER 30

FRAUD AND ABUSE WHISTLE BLOWER REWARD FUND

1VAC42-30-10. Policy.

A. This chapter defines the Fraud and Abuse Whistle Blower Reward Fund (Fund) and its administration by the Office of the State Inspector General (OSIG), including the Fund's eligibility requirements, reward amount, and reward distribution; the process for leftover Fund moneys at the end of the fiscal year; and the Fund's establishment on the books of the Comptroller.

B. The Whistle Blower Protection Act (WBPA) Program and Fund were created to:

1. Encourage employees and Commonwealth citizens to report instances of fraud, abuse, or other wrongdoing committed within executive branch agencies and nonstate agencies.
2. Encourage employees and Commonwealth citizens to report instances of fraud, abuse, or other wrongdoing committed by independent contractors of state agencies.
3. Provide resources to pay monetary rewards to employees and Commonwealth citizens who provide relevant information to the OSIG resulting in recovery of funds on behalf of the Commonwealth.
4. Provide statutory protection for employees and Commonwealth citizens who report instances of abuse or wrongdoing from discrimination or retaliation by state agencies.

1VAC42-30-20. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Abuse" means an employer's or employee's conduct or omissions that result in substantial misuse, destruction, waste, or loss of funds or resources belonging to or derived from federal, state, or local government sources.

"Commonwealth" means the Commonwealth of Virginia.

"Employee" means any person who is regularly employed full time on either a salaried or wage basis, whose tenure is not restricted as to temporary or provisional appointment, in the service of and whose compensation is payable, no more often than biweekly, in whole or in part, by a state agency.

"Employee Suggestion Program" or "ESP" is a Department of Human Resources Management (DHRM) program that encourages, recognizes, and rewards employees for suggestions proposed that are adopted and lead to reduction in state expenditures, improvement in productivity or quality of state services, increase in state revenues, or improved or safer working conditions. The ESP is a separate DHRM initiative and is not connected with the WBPA Program.

"Employer" means a person supervising one or more employees, including the employee filing a good faith report, a superior of that supervisor, or an agent of the state agency.

"Fraud" means the intentional deception perpetrated by an individual or individuals or an organization or organizations, either internal or external to state government, which could result in a tangible or intangible benefit to themselves, others, or the Commonwealth, or could cause detriment to others or the Commonwealth. Fraud includes a false representation of the facts, whether by words or by conduct. Fraud also includes false or misleading statements, or by the concealment of essential information, or information or actions that deceive or are intended to deceive.

"Fraud and Abuse Whistle Blower Protection Act Program" or "WBPA Program" means the policy of the Commonwealth that Commonwealth citizens and employees of state government be freely able to report instances of wrongdoing or abuse committed by their employing agency, other state agencies, or independent contractors of state agencies.

"Fraud and Abuse Whistle Blower Reward Fund" or "Fund" means the fund used solely to provide monetary rewards to Commonwealth citizens who have disclosed information of wrongdoing or abuse under the WBPA Program for a disclosure that results in a savings of at least \$5,000. The amount of the reward is equal to 10% of actual sums recovered by the Commonwealth as a result of the disclosed wrongdoing or abuse. The Office of the State Inspector General administers the Fund and defines the regulations for its operation.

"Good faith report" means a reported incident of possible wrongdoing or abuse made without malice, for which the person reporting has reasonable cause to believe wrongdoing or abuse occurred.

"Hotline coordinator" means a qualified employee, designated by a state agency director or chief administrator, responsible for conducting State Fraud, Waste, and Abuse Hotline investigations referred to the agency by the Office of the State Inspector General.

"Internal audit director" means a director of a state agency internal audit program.

"Misconduct" means conduct or behavior by an employee that is inconsistent with state or agency standards for which specific corrective or disciplinary action is warranted.

"Office of the State Inspector General" or "OSIG" means the state agency that conducts independent investigations, performance reviews, and other services designed to provide objective and useful information to the Commonwealth and those charged with its governance and promote efficiency and effectiveness in state government executive branch agencies. OSIG administers the Fund.

"Reward" means a monetary benefit payable from the Fund by the OSIG to an eligible whistle blower.

"Screening process" means OSIG's internal review to ensure reports of information or disclosures of wrongdoing fall within the authority of the WBPA Program.

"State agency" means any agency, institution, board, bureau, commission, council, or instrumentality of state government in the executive branch listed in the appropriation act.

"State Fraud, Waste, and Abuse Hotline" or "Hotline" means the program (i) that provides Commonwealth citizens with a confidential and anonymous method to report suspected occurrences of fraud, waste, and abuse in state agencies and institutions and (ii) that provides the Commonwealth a way to investigate such occurrences to determine their validity and make appropriate recommendations to address deficiencies.

"Whistle blower" means an employee or a Commonwealth citizen who witnesses or has evidence of wrongdoing or abuse and who makes a good faith, open, and public report of the wrongdoing or abuse to one of the employee's superiors, an agent of the employer, or an appropriate authority.

"Wrongdoing" means a violation, which is not of a merely technical or minimal nature, of a federal or state law or regulation or a formally adopted code of conduct or ethics of a professional organization designed to protect the interests of the public or employee.

1VAC42-30-30. OSIG responsibilities.

A. OSIG is responsible for administering the WBPA Program and Fund and the following tasks:

1. Notifying agencies of WBPA Program and Fund regulations and procedures for submitting information regarding abuse or wrongdoing.
2. Conducting appropriate investigations and preparing official reports.
3. Receiving and evaluating Fund claims.
4. Ensuring payment of approved Fund moneys to whistle blowers.
5. Submitting an annual report on WBPA Program activities to the Governor and General Assembly.

B. OSIG's Investigative and Law Enforcement Services Division is responsible for investigating alleged abuse, fraud, or other wrongdoing reported to the OSIG under the WBPA Program. OSIG may work with executive branch agency internal audit directors or with Hotline coordinators when performing WBPA Program investigations.

1VAC42-30-40. WBPA Program and Fund notification.

A. Annually, the State Inspector General will send a letter via the state email directory announcing and publicizing the WBPA Program and Fund to all state executive branch agency heads and notifying them of relevant statutory amendments or program changes.

B. January of each year, OSIG will publicize the WBPA Program and Fund through an electronic communication to all employees and Commonwealth citizens. The communication will:

1. Contain the requirements for reporting allegations to OSIG under the WBPA Program.
2. Clarify pertinent differences between the WBPA Program and the Hotline regarding the rules governing anonymity and confidentiality.
3. Explain that employees and Commonwealth citizens may be asked to decide whether they wish to report information or concerns under the WBPA Program or via the Hotline.

1VAC42-30-50. Reporting alleged fraud, abuse, or wrongdoing.

A. An employee or a Commonwealth citizen with an allegation of fraud, abuse, or wrongdoing under the WBPA Program may contact OSIG by phone, email, United States Postal Service (USPS), or FAX.

B. OSIG staff is available to advise citizens whether to report the alleged abuse, fraud, or wrongdoing under the WBPA Program or the Hotline.

C. OSIG requires the whistle blower to provide his name and lawful residence if he intends to file a Fund claim under the WBPA Program.

D. Allegations of abuse or wrongdoing received by OSIG via email, USPS, or FAX that do not include the sender's name and personal contact information will be managed by the Hotline and will not be eligible for Fund moneys.

E. Individuals who report information or allegations under the WBPA Program and are determined by OSIG to meet Fund eligibility requirements will be assigned a whistle blower case number.

1VAC42-30-60. OSIG receipt of an allegation.

A. Allegations of fraud, abuse, or wrongdoing received by the OSIG undergo a two-step screening process.

1. Step one: The OSIG staff member will confirm (i) the name and identity of the individual who submits an allegation of abuse or wrongdoing, and (ii) that the individual is an employee or a Commonwealth citizen. The individual submitting the allegation will be asked if he intends to file a Fund claim. If the individual intends to file a Fund claim, he will need to disclose personal identity and contact information.

2. Step two: The OSIG will determine whether the allegation:

- a. Meets the criteria of the WBPA Program as it relates to fraud, abuse, or wrongdoing.
- b. Contains sufficient detail to initiate an investigation.
- c. Was previously reported (i.e., within a one-year time frame).
- d. Is serious or material enough to warrant dedication of OSIG's investigative resources.

B. Allegations submitted by an individual who is not an employee or Commonwealth citizen will be referred to the appropriate state agency or organization.

C. Allegations managed by the Hotline do not fall within the scope of the WBPA Program. Individuals reporting information under this program are not eligible for Fund moneys.

1VAC42-30-70. Allegation investigative process.

A. Detailed written summary and evaluation. The Hotline manager or designee will prepare a detailed written summary that describes the allegation or allegations of fraud, abuse, or

wrongdoing submitted under the WBPA Program and will evaluate the information to ensure that circumstances meet WBPA Program requirements.

B. Confidential tracking number. The Hotline manager or designee will create a confidential tracking number for each WBPA Program case and assign the case to the OSIG Investigative and Law Enforcement Services Division for formal investigation.

C. Monitor progress and status updates. The Director of the Investigative and Law Enforcement Services Division will monitor the progress of each WBPA Program investigation and provide the State Inspector General with a status update within 90 days of assignment and every 90 days thereafter until completion.

D. Formal WBPA Program case report. Upon completion of an investigation, the investigator will prepare and submit a formal WBPA Program case report for management review and approval. When appropriate, recommendations for corrective action to address procedural deficiencies disclosed during the investigation will be included in the formal case report.

E. Financial recovery. Formal WBPA Program case reports will describe all financial recovery realized on behalf of the Commonwealth as a result of the information received from the whistleblower and the subsequent investigation.

F. Executive summary. Formal WBPA Program case reports will be forwarded to the State Inspector General for review. Upon authorization by the State Inspector General, the investigator will prepare an executive summary that recaps the findings of the investigation, recommendations, the recovery of funds, and the status of applicable Fund claims. Upon signature approval of the State Inspector General, the executive summary will be forwarded to the subject state executive branch agency's director or chief executive, respective Secretariat, and the Chief of Staff of the Governor.

1VAC42-30-80. Nonreverting fund.

A. OSIG will coordinate with the State Comptroller to establish a special nonreverting Fund.

B. The Fund will be established on the books of the State Comptroller and administered by the State Inspector General.

C. All moneys recovered by an OSIG investigation as a result of whistle blower activity and any alerts originating with the OSIG shall be deposited in the Fund.

D. Except for the moneys described in subsection F of this section, moneys remaining in the Fund at the end of each fiscal year, including interest, shall not revert to the General Fund, but shall remain in the Fund.

E. Moneys in the Fund shall solely be used to:

1. Provide monetary rewards to Commonwealth citizens who have disclosed information of fraud, wrongdoing, or abuse under the WBPA Program (§ 2.2-3009 et seq. of the Code of Virginia), and the disclosure resulted in a recovery of at least \$5,000.

2. Support the administration of the Fund, defray Fund advertising costs, or subsidize the operation of the Hotline.

F. Per the State Inspector General's authorization by the end of each calendar quarter, 85% of all sums recovered by an OSIG investigation will be remitted to the institutions or agencies concerned, unless otherwise directed by a court of law.

1VAC42-30-90. Fund payments to whistle blowers.

A. Within 10 working days, excluding state holidays and weekends, of the closing of a WBPA Program investigation that verifies a final recovery of \$5,000 or more, the State Inspector General will review and certify the Fund claim. Upon approval of the Fund claim, the State Inspector General will submit a written request to the State Comptroller to make a reward payment from the Fund to the whistle bower.

B. The State Treasurer will make reward payments from the Fund based on a warrant issued by the State Comptroller and a written request signed by the State Inspector General.

C. In the event that multiple whistle blowers have simultaneously reported the same Fund-eligible occurrence of fraud, abuse, or wrongdoing the Fund moneys may be split up to 10% among the whistle blowers, at the State Inspector General's discretion.

1. The amount of the Fund reward shall be up to 10% of the actual sums recovered by the Commonwealth as a result of the disclosure of the fraud, abuse, or wrongdoing.

2. The amount of the reward will not exceed the balance of the Fund, regardless of the sums recovered.

3. The State Inspector General's decision regarding the allocation of Fund moneys is final and binding upon all parties and cannot be appealed.

4. The request for payment will include the name and address of the whistle bower and the payment amount. OSIG will provide documentation supporting the amount of the payment to the State Comptroller.

5. Once approved, the State Comptroller shall forward the request to the Department of Accounts' (DOA) Finance and Administration, with a request that Finance and Administration process the payment to the whistle bower.

6. DOA will ensure the amount of the Fund reward is properly included in the whistle bower's federal and state tax records (i.e., W-2 for employees; 1099 for Commonwealth citizens).

7. OSIG will confirm that DOA processes the Fund request and that reward payment is made to the whistle bower for the amount approved by the State Inspector General.

8. Five percent of all sums recovered on behalf of the Commonwealth will be retained in the Fund to support the administration of the Fund, defray advertising costs, and subsidize the operation of the Hotline. Expenditures for administrative costs for management of the Fund will be approved by the State Inspector General.

1VAC42-30-100. Whistle bower protections under the WBPA Program.

A. Employee protections.

1. No employer may discharge, threaten, or otherwise discriminate or retaliate against a whistle bower, whether acting individually or under the direction of another individual.

2. No employer may discharge, threaten, or otherwise discriminate or retaliate against a whistle bower who is requested or subpoenaed by an appropriate authority to participate in an investigation, hearing, or inquiry.

3. Nothing in this chapter shall prohibit an employer from disciplining or discharging a whistle bower for misconduct or violation of criminal law.

4. If an employee has, in good faith, exhausted existing internal procedures for reporting and seeking recovery of falsely claimed sums through official channels, and if the

Commonwealth failed to act on the information provided in a reasonable period of time, no court shall have jurisdiction over an action brought under § 8.01-216.5 of the Code of Virginia based on information discovered by a present or former employee of the Commonwealth during the course of his employment.

5. Any whistle blower covered by the state grievance procedure may initiate a grievance alleging retaliation for reporting fraud, abuse, or wrongdoing through the WBPA Program and may request relief throughout that procedure.

B. Commonwealth citizen protections.

1. No state agency may threaten or otherwise discriminate or retaliate against a citizen whistle blower because the whistle blower is requested or subpoenaed by an appropriate authority to participate in an investigation, hearing, or inquiry.

2. Except for the provisions of § 2.2-3011 E of the Code of Virginia, the WBPA Program does not limit the remedies provided by the Virginia Fraud Against Taxpayers Act (§ 8.01-216.1 et seq. of the Code of Virginia).

C. Protection against discrimination and retaliation - good faith required. To be protected by the provisions of this chapter, an employee or Commonwealth citizen who discloses information about suspected fraud, abuse, or wrongdoing shall do so in good faith and upon a reasonable belief information provided is accurate. Reckless disclosures or disclosures the employee or citizen know or should have known were false, confidential by law, or malicious are not deemed good faith reports and are not protected.

1VAC42-30-110. WBPA Program and Fund annual report.

A. OSIG shall submit an annual report to the Governor and the General Assembly of Virginia summarizing the activities of the Fund.

B. OSIG will provide a copy of the WBPA Program annual report to the Chief of Staff to the Governor, the Secretary of Finance, and the State Comptroller.